

**SB 410 with guide notes**

**SENATE BILL No. 410**

June 7, 2011, Introduced by Senator RICHARDVILLE and referred to the Committee on Economic Development.

A bill to create a governmental authority for new international trade crossings; to prescribe the powers and duties of the authority; to authorize procurement, design, finance, construction, maintenance, operation, improvement, and repair of new international bridges and approaches; to authorize certain agreements with public and private entities; to provide for the issuance of, and terms and conditions for, certain bonds; to provide for the imposition, collection, and enforcement of user fees and other charges; to provide for civil fines; to authorize the acquisition, maintenance, and disposal of interests in real and personal property; to provide for certain duties of certain state and local departments and officers; to provide for the power to enter into interlocal agreements; to exempt certain property, income, and activities from tax; to make an appropriation; and to

repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

Sec. 1. This act shall be known and may be cited as the "new international trade crossing **act**".

Comment [DOIT1]: TITLE

Sec. 3. As used in this **act**:

Comment [DOIT2]: DEFINITIONS

(a) "Authority" means the Michigan governmental authority for a new international trade crossing created in this act.

(b) "Availability payment" means a periodic payment to a concessionaire under a public-private agreement.

(c) "Bond" means a revenue bond, note, or other obligation issued by the authority under this act.

(d) "Canadian contribution" means a gift, contribution, payment, advance, grant, availability payment, or other money received for or in aid of a project from a public agency of Canada pursuant to a governance agreement.

(e) "Concessionaire" means a private entity that is a party to a public-private agreement authorized by this act.

(f) "Crossing" means a public international bridge and bridge approaches, including, but not limited to, all related structures, plazas, facilities, improvements, extensions, interchanges, property, and property interests, between Ontario, Canada, and this state that is at least partially located in a city that, as of the date of the first commencement of a project activity, has a population of at least 600,000 according to the most recent decennial census.

(g) "Debt" means borrowed money, loans, and other indebtedness, including principal and interest, evidenced by a bond

or other security lawfully issued or assumed under this act, in whole or in part, by the authority or that may be evidenced by a judgment or decree against the authority.

(h) "Department" means the state transportation department.

(i) "Disaster" means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural cause or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, hostile military action or paramilitary action, or a similar occurrence resulting from terrorist activity, riot, or civil disorder.

(j) "Disaster recovery" means action taken by a governmental agency in response to a disaster.

(k) "Governance agreement" means an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, that includes the authority and a public agency of Canada as parties.

(l) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other nongovernmental business entity.

(m) "Project" means all activities associated with a crossing, including project land activities and project activities.

(n) "Project activity" means the research, planning, procurement, design, financing, construction, and improvement for, and repair, maintenance, and operation of, a crossing under this act.

(o) "Project contribution" means a gift, contribution, payment, advance, grant, or other money received in aid of a project from the federal government or an agency of the federal government.

(p) "Project costs" means the costs associated with a project, including, but not limited to, the cost of project activities; project land activities; mitigation and enhancement measures included in the green sheet or record of decision for a project pursuant to the national environmental policy act of 1969, 42 USC 4321 to 4370h; all assets, including machinery, vehicles, and equipment, including financing costs; traffic estimates; studies; legal and other advisory services; engineering services; plans; surveys; feasibility studies; administrative expenses; and expenses that may be necessary or incidental to the procurement, design, construction, repair, or improvement of the crossing and the financing, operation, and maintenance of the crossing.

(q) "Project land activity" means the acquisition of all land, rights-of-way, property, rights, easements, and interests for a crossing.

(r) "Project revenue" means user fees or other charges generated by the use of a crossing and any other revenue generated from the use of or by the crossing or associated with a project, including, but not limited to, any revenue arising from a public-

private agreement.

(s) "Public agency" means that term as defined under section 2 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.502, including, but not limited to, an entity established by the government of Canada under the laws of Canada and an authority established under this act.

(t) "Public-private agreement" means any of the following relating to the research, planning, procurement, design, financing, construction, and improvement for, and repair, maintenance, and operation of a project:

(i) An agreement between a private entity or private entities and the authority.

(ii) An agreement between a private entity or private entities and a public agency of Canada.

(iii) An agreement between a private entity or private entities and a separate legal or administrative entity created under a governance agreement.

(iv) An agreement with a private entity or private entities and a public agency or public agencies as parties involving a joint exercise of power by the authority and a public body of Canada authorized by a governance agreement.

(u) "Qualified revenue" means all of the following:

(i) Project revenue.

(ii) A Canadian contribution.

(iii) A project contribution.

Sec. 7. (1) The authority is created as a public body corporate in the department. Except as otherwise provided in this

**Comment [DOIT3]: AUTHORITY IS PUBLIC BODY CORPORATE IN MDOT**

act, the authority shall exercise its powers, duties, and functions under this act independently of the director of the department. The authority may contract with the department for the purpose of maintaining the rights and interests of the authority.

(2) The budgeting, procurement, and related management functions of the authority shall be performed under the direction of the director of the department. This subsection does not apply to a separate legal or administrative entity that may be created by a governance agreement.

(3) The authority shall ensure that the expenditure of any Canadian contribution in this state maximizes the amount of federal aid to the department. To accomplish this objective, the project shall be divided into discrete portions that may independently qualify for federal aid. If maximizing federal aid to the department would cause the total cost of those portions in this state that are to be funded by the Canadian contribution under the governance agreement to exceed the Canadian contribution amount specified in the governance agreement for those portions, the portion or portions that would generate the least total federal aid to the department shall be exempt from this requirement. No more portions shall be exempt from this requirement than are necessary to bring the total cost of those portions in this state that are to be funded by the Canadian contribution under the governance agreement below the level of the Canadian contribution amount specified in the governance agreement for those portions. The obligations under this subsection shall not impede the timely implementation of the project. However, it is not an impediment to

**Comment [DOIT4]: MAXIMIZE FEDERAL AID**

the timely implementation of the project if the delay is necessary in order to maximize the amount of federal aid to the department and is for a reasonable time period as described in the governance agreement. The director of the department shall ensure that the authority complies with this subsection. The obligations under this subsection terminate on the date the crossing is open to public transportation.

(4) Subject to available appropriations, notwithstanding other law to the contrary, if requested by the authority, the department shall provide staff and other support to the authority sufficient to enable the authority to carry out the powers, duties, and functions of the authority under this act.

**Comment [DOIT5]: MDOT STAFF MAY  
SUPPORT AUTHORITY**

(5) All departments, agencies, and officers of state government shall provide full cooperation to the authority in the performance of powers, duties, and functions of the authority.

(6) This act does not diminish the power of the state transportation commission under section 28 of article V of the state constitution of 1963 to establish policy for department programs and facilities and other public works of this state, as provided by law.

(7) This act does not diminish the power of the civil service commission under section 5 of article XI of the state constitution of 1963.

(8) The authority may exercise all of the following powers:

(a) Adopt bylaws to regulate its affairs and conduct its business.

(b) Adopt or change an official seal.

(c) Maintain an office or offices as needed.

(d) Sue and be sued in its own name.

(e) Determine location, design standards, and construction materials of a crossing.

(f) Research, plan, procure, design, finance, construct, operate, improve, and repair a project.

(g) Fix, revise as necessary, charge, enforce, and collect user fees and other charges for the use of, or contract with a private entity to fix, revise as necessary, charge, enforce, and collect user fees and other charges for the use of a crossing.

(h) Establish rules and regulations for use of a crossing.

(i) Purchase, otherwise acquire, receive, accept, lease, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act, including, but not limited to, interests in real and personal property and related rights or interests such as structures, rights-of-way, franchises, easements, liens, lands under water, and riparian rights. Nothing in this subdivision or act gives the authority the power of eminent domain.

**Comment [DOIT6]: AUTHORITY DOES NOT HAVE EMINENT DOMAIN POWER**

(j) Accept contributions of real property from the department or other entities.

(k) Issue bonds and refinance the bonds, as authorized by this act.

(l) Make and enter into contracts and agreements necessary or incidental to the performance of its duties and the exercise of its powers under this act.

(m) Employ consulting engineers, attorneys, accountants,



construction and financial experts, superintendents, managers, and other employees and agents as may be necessary in its judgment and fix their compensation, subject to any applicable rules or regulations of the civil service commission.

(n) Receive and accept from any source gifts, property, structures, rights, rights-of-way, franchises, easements, property rights, contributions, grants, or funds for or in aid of a project.

(o) Develop and use any property owned or controlled by the authority for customs brokering, currency exchange transactions, or for the sale of articles for export and consumption outside the United States or Canada, respectively, to the extent that this use is not restricted by federal law or Canadian law. The authority may also enter into contracts or leases to provide for the development and use of any property owned or controlled by the authority for customs brokering, currency exchange transactions, or for the sale of articles for export and consumption outside the United States or Canada, respectively, to the extent that this use is not restricted by federal law or Canadian law. If the authority contracts for the services described in this subdivision, the authority shall use a competitive bidding process. A contract or lease entered into under this subdivision does not exempt a person from the payment of any motor fuel, sales, or other taxes required to be paid under the laws of this state on articles or fuel sold or brought into this state for consumption.

(p) Enter into a governance agreement as provided in section

11.

(q) Apply for and use grants, loans, loan guarantees, lines of

**Comment [DOIT7]: AUTHORITY MAY ENTER INTO A GOVERNANCE AGREEMENT WITH CANADIAN PUBLIC AGENCY**

credit, revolving lines of credit, or other arrangements available under 23 USC 601 to 610 or other applicable law in a manner consistent with this act.

(r) Seek allocation for, issue, and provide for the issuance of private activity bonds as described under 26 USC 141 or other applicable law to finance a **project**.

**Comment [DOIT8]: PRIVATE ACTIVITY BONDS (PABs)**

(s) Exercise other powers of the department relating to streets, highways, transportation programs, transportation facilities, and transportation public works of this state not otherwise vested in the authority only to the extent related to a project and necessary to carry out the purposes of this act. Nothing in this subdivision or act gives the authority the power of eminent **domain**.

**Comment [DOIT9]: AUTHORITY DOES NOT HAVE EMINENT DOMAIN POWER**

(t) Do anything necessary and proper consistent with the provisions of this act to carry out the purposes of and powers explicitly granted in this act.

Sec. **9**. (1) The powers and duties of the authority are vested in a board of directors. The board shall have 5 members who shall be appointed by the governor with the advice and consent of the senate. The governor shall designate a member of the board, who does not also serve as the head of a state department, as its chairperson. One member shall be appointed by the governor from a list of 3 or more names nominated by the senate majority leader, and 1 member shall be appointed by the governor from a list of 3 or more names submitted by the speaker of the house of representatives. Of the 3 members initially appointed by the governor without nomination by the senate majority leader or the

**Comment [DOIT10]: BOARD OF DIRECTORS FOR AUTHORITY**

speaker of the house of representatives, the first member shall be appointed for an initial term of 2 years, and 2 members shall be appointed for an initial term of 4 years each. The initial members nominated by the senate majority leader and the speaker of the house of representatives shall be appointed for initial terms of 2 years each. After the expiration of initial terms, members shall be appointed for terms of 4 years. A member of the board shall continue to serve until a successor is appointed and qualified. A vacancy on the board occurring other than by expiration of a term shall be filled by the governor in the same manner as the original appointment for the balance of the unexpired term. An employee of the department shall not serve as a member of the board.

(2) A majority of the members of the board serving constitute a quorum for the transaction of the business of the authority. The board shall act by a majority vote of its serving members.

(3) The board shall meet at the call of the chairperson and as may be provided in procedures adopted by the board.

(4) The board may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public. Subject to available funding, the board also may consult with outside experts to perform its duties, including, but not limited to, experts in the private sector, organized labor, and government agencies and experts at institutions of higher education.

(5) The board may hire or retain contractors, subcontractors, advisors, consultants, and agents as the board considers advisable and necessary, in accordance with the relevant statutes and

procedures, rules, and regulations of the civil service commission and the department of technology, management, and budget and may make and enter into contracts necessary or incidental to the exercise of the powers and performance of the duties of the board. Under this subsection, the board may hire or retain contractors, subcontractors, advisors, consultants, and agents as the board considers advisable and necessary to provide legal advice or legal services, to provide for research and development activity, or to provide strategic planning services.

(6) Members of the board shall serve without compensation. Members of the board may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the civil service commission and the department of technology, management, and budget, subject to available funding.

(7) A member of the board shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. A member of the board shall not make or participate in making a decision, or in any way attempt to use his or her position as a member of the board to influence a decision, on a matter before the authority in which the member is directly or indirectly interested. A member of the board shall not be interested directly or indirectly in any contract with the authority or the department that would cause a substantial conflict of interest. A member of the board shall comply, and the board shall adopt policies and procedures that require members to

comply, with the requirements of this subsection and all of the following:

(a) 1978 PA 472, MCL 4.411 to 4. 431.

**Comment [DOIT11]: LOBBYING  
ACTIVITIES**

(b) 1978 PA 566, MCL 15.181 to 15. 185.

**Comment [DOIT12]: INCOMPATIBLE  
PUBLIC OFFICES**

(c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

**Comment [DOIT13]: CONFLICT OF  
INTEREST**

(d) 1968 PA 317, MCL 15.321 to 15.330, as if he or she were a public servant.

**Comment [DOIT14]: CONTRACTS OF  
PUBLIC SERVANTS WITH PUBLIC  
ENTITIES; CONFLICT OF INTEREST**

(e) 1973 PA 196, MCL 15.341 to 15.348, as if he or she were a public officer.

**Comment [DOIT15]: STANDARDS OF  
CONDUCT FOR PUBLIC OFFICERS AND  
EMPLOYEES**

(8) Beginning on the effective date of this act and continuing until the appointment and qualification of 5 members of the board as provided under this section, the powers and duties vested in the board under this act may be exercised by the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3.

(9) Within 60 days after the first meeting of the authority, the department shall establish a website for the authority and the authority shall post on the website updates not less than weekly on authority activities and transactions and the progress of any project, including, but not limited to, all proposed public-private agreements.

(10) The authority is subject to, and shall conduct its meetings in compliance with, the open meetings act, 1976 PA 267, MCL 15.261 to 15. 275.

**Comment [DOIT16]: SUBJECT TO OPEN  
MEETINGS ACT**

(11) Except as otherwise provided in this act, the authority shall comply with the freedom of information act, 1976 PA 442, MCL 15.231 to 15. 246.

**Comment [DOIT17]: SUBJECT TO FOIA**

(12) The department may transfer property or interests in property under the jurisdiction or control of the department to the authority for purposes authorized under this act.

Sec. 11. (1) The authority may enter into a governance agreement concerning a project under this act. The governance agreement may create a separate legal or administrative entity under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, including a joint venture between the authority and a public agency of Canada, that shall be a public body corporate or politic and shall not be a public body of the executive branch of this state. Pursuant to this subsection, activities of the authority under this act may be exercised jointly with a public agency of Canada pursuant to a governance agreement, including through a separate legal or administrative agency. The governance agreement may establish terms and conditions for the separate legal or administrative entity to exercise any power that the authority and a public agency of Canada share in common as provided in section 4 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.504. The governance agreement shall not authorize the authority or any entity created by the governance agreement to levy a tax or to take property using the power of eminent domain.

**Comment [DOIT18]: GOVERNANCE AGREEMENT; JOINT VENTURE**

(2) In accordance with a governance agreement established under subsection (1), the department or the authority may receive funds from a Canadian contribution. An agreement involving the authority and a public agency of Canada relating to a Canadian contribution shall not impose any obligation on the department, the

**Comment [DOIT19]: AUTHORITY MAY NOT LEVY TAX OR EXERCISE POWER OF EMINENT DOMAIN**

authority, this state, or a political subdivision of this state to repay the Canadian contribution from revenues other than project revenue and project **contributions**.

(3) A governance agreement may provide for the following:

(a) Repayment of all or any part of any Canadian contribution but only if repayment of the contribution is required to be paid, repaid, or returned exclusively from project revenue or project contributions.

(b) A provision allowing binding arbitration or other alternative forms of dispute resolution.

(4) A governance agreement shall provide for all of the following:

(a) If repayment under subsection (3)(a) is required, an equitable schedule for reimbursement of Canadian contributions from project revenue and project contributions.

(b) Provisions necessary to satisfy section 7(3).

(c) That any project comply with the national environmental policy act of 1969, 42 USC 4321 to 4370h, or other requirements of the federal highway administration, including, but not limited to, any mitigation or enhancement measures included in a green sheet or record of decision for the project pursuant to the national environmental policy act of 1969, 42 USC 4321 to 4370h.

(d) An equitable schedule for reimbursement to the authority, from project revenue and Canadian contributions, for any liability incurred by the authority, a separate legal or administrative entity, or joint venture, caused by the acts or omissions of a Canadian public agency whether in connection with a joint venture,

**Comment [DOIT20]: REPAYMENT OF CANADIAN CONTRIBUTION LIMITED TO PROJECT REVENUE AND PROJECT CONTRIBUTIONS**

a separate legal or administrative entity, or otherwise.

**Comment [DOIT21]: AUTHORITY  
REIMBURSED FOR ANY EXPENSES CAUSED  
BY CANADIAN ACTS OR OMISSIONS**

(5) A governance agreement shall not allow this state, the department, or a political subdivision of this state to assume liability for the acts or omissions of the authority or a Canadian public agency whether in connection with a joint venture, a separate legal or administrative entity, or otherwise.

**Comment [DOIT22]: NO LIABILITY FOR  
ACTS OR OMISSIONS OF CANADA**

(6) After setting aside sufficient funds to pay for its expenses authorized by this act, the authority shall deposit any remaining funds distributed to the authority from project revenue into the state trunk line fund established under section 11 of 1951 PA 51, MCL 247.661.

(7) Upon executing a governance agreement, the authority shall transmit copies of the governance agreement to the clerk of the house of representatives and the secretary of the senate.

Sec. 13. (1) The authority may enter into a public-private agreement concerning a crossing and project activity as provided in this act. A public-private agreement shall include terms designed to protect the public interest and assure accountability of a concessionaire to the authority and a public agency of Canada. A public-private agreement may contain terms and conditions consistent with any limitations under this act that the authority may determine or negotiate to facilitate the crossing and project activity. The agreement may contain a provision allowing binding arbitration or other alternative forms of dispute resolution.

(2) A public-private agreement shall provide for all of the following:

(a) An initial term for the use and operation of the crossing



or project activity by a concessionaire for a period that the authority determines is necessary for the development and financing of the project and the economic feasibility of the public-private agreement. The initial term shall not exceed 50 years in length from the date on which the crossing is open to the public and collecting user fees or other charges. After the initial term, the authority may renew a public-private agreement or execute a new public-private agreement for a period that the authority determines is necessary for the development and financing of the project and the economic feasibility of the public-private agreement so long as that term does not exceed 50 years in length. If the operation or maintenance of the crossing is impaired because of disaster or disaster recovery not attributable to actions of the concessionaire, a term may be extended for an extended period equal to the period of **impairment**.

(b) The termination of the public-private agreement.

(c) A requirement that the control of the crossing revert from the concessionaire to the authority and a public agency of Canada at the end of the public-private agreement in a manner and condition required under the public-private agreement and governance **agreement**.

(d) That ownership of a crossing within this state is vested in the authority. A public-private agreement may provide for the use and occupancy of the crossing if the use and occupancy do not interfere with the transportation and related public uses of the **crossing**.

(e) A lease, license, right of entry, or other instrument for

**Comment [DOIT23]: 50 YEAR TERM FOR CONCESSION AGREEMENT**

**Comment [DOIT24]: CONTROL OF CROSSING REVERTS TO AUTHORITY AND CANADIAN PUBLIC AGENCY AT END OF CONCESSION AGREEMENT**

**Comment [DOIT25]: OWNERSHIP OF BRIDGE VESTED IN AUTHORITY**

the crossing as the authority determines is in the public interest and is consistent with this act.

(f) The right of the authority to share in any refinancing gains benefiting the concessionaire under the public-private agreement.

(g) A requirement that the concessionaire cooperate with the authority and any other appropriate public agencies on all matters concerning the security of the crossing or disaster recovery for the crossing.

**Comment [DOIT26]: CONCESSIONAIRE MUST COOPERATE WITH PUBLIC AGENCIES REGARDING SECURITY**

(h) A requirement that the concessionaire submit to all appropriate public agencies written plans for the security of the crossing and disaster recovery for the crossing.

(i) A requirement that during a period the project is operated by the concessionaire the concessionaire shall have control for operational purposes over designated portions of the crossing.

(j) A requirement that the concessionaire appear and testify without a subpoena at a legislative hearing convened and conducted in accordance with applicable law and relating to the public-private agreement or a project that is the subject of the public-private agreement.

**Comment [DOIT27]: CONCESSIONAIRE MUST APPEAR AT LEGISLATIVE HEARINGS WITHOUT SUBPOENA**

(k) The specification of the scope of the project and the scope of control for operational purposes to be vested in the department or the authority upon the completion of construction of the crossing.

(3) This state, the department, the authority, a separate legal or administrative entity created under a governance agreement, and any political subdivision of this state are not

liable for the acts or omissions of a **concessionaire**.

**Comment [DOIT28]: NO LIABILITY FOR ACTS OF CONCESSIONAIRE**

(4) Except as otherwise provided in this act, a public-private agreement shall impose on the concessionaire, while performing activities in this state, the same requirements of law applicable specifically to contracts requiring or involving the employment of construction mechanics that are imposed upon a state officer, board, commission, or institution entering into a contract requiring or involving the employment of construction mechanics with which it contracts directly for the new construction, alteration, repair, installation, painting, improvement, or completion of a bridge supported in whole or in part by state **funds**.

**Comment [DOIT29]: CONSTRUCTION MECHANIC LAWS APPLY TO CONCESSIONAIRE – IE. “PREVAILING WAGE”**

(5) A public-private agreement shall establish the amounts for which the concessionaire shall post payment and performance bonds or other security as provided in this subsection. A public-private agreement may authorize a concessionaire to provide a letter of credit in lieu of a payment or performance bond. If the authority determines that bonds or letters of credit are not reasonably available in sufficient amounts, the authority may accept parent corporation guarantees to supplement available payment bonds, performance bonds, or letters of credit. The authority shall require the posting of sufficient security to fulfill the purposes of a payment and performance bond. In lieu of posting by a concessionaire, or in supplementation of that posting, the authority may accept bonds, letters of credit, and other security from private entities other than the concessionaire that is subject to posting so long as the purposes of a payment and performance

bond are fulfilled.

Sec. 14. A governance agreement or a public-private agreement shall not authorize any of the following:

(a) The public being deprived of the use and benefit of the crossing except as necessary to implement user fees or other charges authorized by this act, to regulate the level or character of permissible uses of the crossing, to address issues of public safety or security, or to maintain, repair, or improve the crossing.

(b) The department, a public agency in this state, or a private entity in this state, being prohibited from researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in this state that is included in the department's long-range plan in effect on the date that proposals for the public-private agreement are submitted under section 15.

**Comment [DOIT30]: NO RESTRICTION ON PROJECTS IN MDOT'S LONG-RANGE PLAN**

(c) A private entity in this state being prohibited from researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in this state that is otherwise authorized under the laws of this state.

**Comment [DOIT31]: OTHER PROJECTS NOT PROHIBITED**

(d) This state, any of its political subdivisions, the department, or an authority, using state funds to make an availability payment. This subdivision does not restrict a public agency of Canada or a separate legal or administrative entity created under a governance agreement from making availability payments repayable from qualified revenues if authorized under the

public-private agreement and the governance agreement.

**Comment [DOIT32]: NO STATE FUNDS FOR AVAILABILITY PAYMENTS**

(e) A concessionaire to sell or transfer its interest in a public-private agreement except as provided in the public-private agreement.

**Comment [DOIT33]: CONCESSIONAIRE CANNOT SELL OR TRANSFER INTEREST UNLESS PROVIDED FOR IN P3 AGREEMENT**

Sec. 15. (1) The authority may solicit proposals for the selection of a concessionaire for a project using a competitive selection process. The authority may charge and use fees to offset the administrative costs of receiving and evaluating proposals. Before receiving a proposal, the authority may agree to reimburse a private entity for costs incurred in the preparation and presentation of the proposal in return for the right to use any work product contained in the proposal, including, but not limited to, the technologies, methods, processes, and information contained in the material submitted in connection with the proposal.

**Comment [DOIT34]: AUTHORITY MAY REIMBURSE CONCESSIONAIRE FOR COSTS INCURRED IN PREPARATION OF PROPOSAL**

(2) Costs associated with selection of a concessionaire for a project shall only be paid from qualified revenue.

(3) Before a request for proposal is issued by the authority, the authority shall conduct at least 1 public hearing on the request for proposal and selection process. The authority shall use 1 or more of the following procurement approaches:

**Comment [DOIT35]: PUBLIC HEARING ON REQUEST FOR PROPOSAL AND SELECTION PROCESS**

(a) Sealed bidding.

(b) Selection of proposals, with or without negotiations, based on qualifications, development proposals, technical proposals, financial proposals, best value, or any combination of these.

(4) The authority shall consider all of the following factors in evaluating and selecting a bid or proposal to enter into a

**Comment [DOIT36]: FACTORS AUTHORITY SHALL CONSIDER IN SELECTION PROCESS**

public-private agreement:

(a) The proposed cost of and financial plan for the project.

(b) The general reputation, qualifications, industry experience, safety record, and financial capacity of the private entity.

(c) The proposed research, planning, procurement, design, financing, construction, and improvement for, and repair, maintenance, and operation of, the crossing.

(d) To the extent permitted by federal law, the proposed plan of the private entity to hire legal United States residents and citizens for work relating to the project in this state.

(e) Evidence that a private entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omission insurance.

(f) Any other factors that are proper and consistent with the provisions of this act.

(5) The authority may select multiple concessionaires for a project if it is determined by the authority to be in the public interest to do so.

(6) At the request of a private entity, the authority may acknowledge as confidential and exempt from disclosure trade secrets or proprietary commercial or financial information provided by the private entity as part of a proposal under this section. Information acknowledged by the authority as confidential is exempt from disclosure, including, but not limited to, disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Unless considered proprietary information by the private entity,

**Comment [DOIT37]: CONFIDENTIAL AND EXEMPT INFORMATION FROM CONCESSIONAIRE**

the authority shall not acknowledge routine financial information as confidential. If the authority acknowledges information as confidential, the authority shall provide a description of the information to which exemption from disclosure will extend. The authority may agree to keep confidential and exempt from disclosure, proprietary, commercial, or other confidential information that a concessionaire is required by the public-private agreement to provide to the authority. A bid or proposal from a private entity for a project may be exempted from disclosure by the authority until the authority completes all negotiations and selects the concessionaire with which it intends to enter into a public-private agreement and the final public-private agreement with the concessionaire is effective.

(7) After a final public-private agreement is effective, a bid or proposal is a public record subject to public disclosure, excluding any confidential information exempted from disclosure by the authority under this act. After a final public-private agreement is effective, the authority shall transmit a copy of it to members of the legislature by transmitting copies to the clerk of the house of representatives and the secretary of the senate, excluding any confidential information exempted from disclosure by the authority under this act.

(8) A proposal or bid submitted by a private entity under this section shall include an executive summary in a form determined by the authority summarizing the major elements of the proposal excluding the price, financing plan, or other trade secrets or confidential proprietary commercial or financial information that

**Comment [DOIT38]: EXECUTIVE  
SUMMARY OF BIDS SUBMITTED**

the private entity seeks to exempt from disclosure. Upon submission, the executive summary is a public record subject to public disclosure and shall be posted on the website maintained for the authority by the department.

(9) Submission of a solicited or unsolicited proposal constitutes consent for the authority to use the information and ideas provided by a private entity for a project or to seek or enter into a public-private agreement, including to solicit competing proposals, unless the authority agrees otherwise in writing executed by the authority before the **submission**.

**Comment [DOIT39]: AUTHORITY MAY USE INFORMATION AND IDEAS IN PROPOSAL**

(10) The authority or another person acting in accordance with a public-private agreement is not liable for the use of ideas and information provided by a private entity for purposes of seeking or entering into a public-private agreement.

Sec. **17**. (1) The authority may provide for the issuance of bonds. The principal of and interest on the bonds are payable solely from project revenue and project contributions and do not constitute a general or moral obligation of this state. The bonds are not a debt, moral obligation, or liability of this state or any political subdivision of this state and do not constitute or create any indebtedness, liability, or obligation of this state or any political subdivision of this state. Bonds authorized under this act are not a pledge of the full faith and credit of this state or any political subdivision of this state. Each bond shall contain on its face a statement to the effect that neither this state nor the authority is obligated to pay the principal amount of the bonds or any interest on the bonds from any source other than project

**Comment [DOIT40]: AUTHORITY MAY ISSUE BONDS**



revenue and project contributions and that neither the full faith and credit nor the taxing power of this state or any political subdivision of this state is pledged to the payment of the principal or interest.

**Comment [DOIT41]: BONDS ARE REVENUE BONDS ONLY; NO FULL FAITH AND CREDIT OF THE STATE MAY BE PLEDGED; NO GENERAL OR MORAL OBLIGATION OF THE STATE TO REPAY BONDS**

(2) The only bonds that shall be issued by a governmental entity in this state for project financing are the bonds authorized under this act. Consistent with the requirements of subsection (1), a bond may be issued by the authority only for a project to take advantage of financing, credit, or tax exemption opportunities authorized by state or federal law and for providing funds for project costs or the refunding of any bonds issued under this act, together with any costs associated with the transaction. For purposes of this subsection, notwithstanding other law to the contrary, the department may designate the authority as an eligible governmental agency for purposes of applicable state and federal law, including, but not limited to, 1951 PA 51, MCL 247.651 to 247.675. At the request of the authority, the department may enter into agreements under which the department will seek and serve as a conduit for any financing, credit, or tax exemption opportunities authorized by state or federal law.

**Comment [DOIT42]: MDOT MAY SERVE AS CONDUIT FOR FINANCIAL OPPORTUNITIES**

(3) Bonds issued under this section are payable solely from the authority's share under the governance agreement or the public-private agreement of any of the following source of funds:

- (a) Project revenue and project contributions.
- (b) The proceeds of the bond instruments or of bonds sold to finance the refunding of the bonds.
- (c) The proceeds of any financial instrument providing credit,

liquidity, or security for the bonds described in subsection (6).

(d) Investment earnings on any of the sources of funds described in subdivisions (a) to (c).

(4) To the extent required by applicable law, all proceeds from the authority's share under the governance agreement or the public-private agreement of the sources of payments specified in subsection (3) are appropriated to the authority for the payment of the obligations, for payment of project costs, or for payment of principal, interest, or premium on bonds issued by the authority. The action of the authority in issuing the bonds creates a statutory lien upon project revenue and project contributions and other revenue described in subsection (3) as provided by the authority, pledged for the payment of the principal, interest, or premium on the bonds, to and in favor of the holders of the bonds. The statutory lien shall be a first priority lien, paramount and superior to all other liens and interests of any kind that arise or are created after the issuance of the bonds, unless otherwise specified by the authority. Project revenue and project contributions shall remain subject to the statutory lien until all principal, interest, and premium on the bonds are paid or provided for, as specified by the authority at the time of the issuance of the bonds. The statutory lien may be enforced by or on behalf of the holders of the bonds as to the use of project revenue and project contributions, to pay principal, interest, and premium on the bonds or other financial obligations, but the lien shall not be construed to give the holders authorization to compel the sale of a project or a crossing.

**Comment [DOIT43]: BONDHOLDERS  
CANNOT FORCE SALE OF A PROJECT OR  
CROSSING**

(5) In determining whether to issue bonds under this act, the authority may, by duly adopted action, do 1 or more of the following:

(a) Authorize or enter into trust indentures or agreements, insurance contracts, letters of credit, lines of credit, commitments to purchase obligations, remarketing agreements, reimbursement agreements, and any other transaction, agreement, or instrument providing for credit, liquidity, or security for the timely payment of principal, interest, and premium on the bonds or the purchase price of the bonds. Consistent with this act, an instrument may contain covenants by the authority with respect to the bonds and the security for the payment of the bonds and remedies for defaults, including, but not limited to, the appointment of a receiver for a project. A bond may further provide that money and funds subject to a statutory lien authorized by subsection (4) be segregated and held in a separate fund or account, which shall not be levied upon, taken, sequestered, or applied for any purpose other than a purpose for which the statutory lien was created.

(b) Authorize payment from the proceeds of the bonds or from the sources of payment detailed in subsection (3) of the costs of acquiring and maintaining any of the transactions, agreements, or instruments described in subdivision (a), and of reimbursing any draws or advances, with interest, on any credit or liquidity facility.

(c) Authorize or provide for 1 or more specified officers, employees, or agents of the authority, but only within limitations

contained in the authorizing action, to do 1 or more of the following for and on behalf of the authority:

(i) Sell, deliver, and receive payment for the bonds.

(ii) Refund bonds by the delivery of new bonds whether or not the bonds to be refunded have matured or are subject to redemption or purchase before maturity on the date of delivery of the refunding bonds.

(iii) Buy, hold, and sell bonds. The buying, holding, or selling shall not cause the cancellation or merger of the bonds unless specified otherwise by the authority.

(iv) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption or tender rights and obligations to be exercised by the issuer or the holder of the bonds, places of delivery and payment, and other ministerial matters and procedures necessary to complete the transactions authorized by the authority.

(6) Bonds may be issued with the terms specified by the authority consistent with the requirements of this act. Among other terms that may be specified are any of the following:

(a) Maturity dates of the bonds, which shall not exceed 50 years from the later of the date the bonds are issued or the date the project financed with the proceeds of the bonds is opened to the public and the collection of user fees first occurs.

(b) Tender rights.

(c) Procedures for the holders of the bonds.

(d) Provisions for remarketing any bonds tendered.

(e) The nature of interest to be paid on the bonds, which may be fixed or variable rates of interest or no stated interest, but with payments of principal at amounts higher than the amounts paid by the original purchaser for the bonds.

(7) The yield on any bonds issued under this act, taking into account the price at which the bonds are sold, the stated interest rates, and the amounts at which the bonds are to be paid at the scheduled maturity date, shall not exceed the maximum rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(8) In connection with outstanding bonds, or in connection with the issuance or proposed future issuance of bonds, in each case issued or to be issued under this act, the authority may authorize the execution and delivery of agreements providing for interest rate exchanges or swaps, hedges, caps, collars, and floors, or similar arrangements. The obligations of the authority under the agreements, including termination payments, shall not constitute a pledge of the faith and credit or indebtedness of this state or any political subdivision of this state but shall be made payable from and secured by a pledge of and lien on the same sources of funds as the bonds in relation to which the agreements are entered into, or from any other sources of funds available for the payment of bonds under this act.

(9) All expenses incurred by the authority in carrying out this section are payable only from revenues provided or to be provided under this act. This act does not authorize the authority to incur any indebtedness or liability on behalf of or payable by

this state. This act does not authorize the authority to levy a tax.

**Comment [DOIT44]: AUTHORITY MAY NOT INCUR ANY INDEBTEDNESS PAYABLE BY THE STATE**

(10) Except as otherwise provided in this section, bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(11) The issuance of bonds under this section is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177. The issuance of bonds under this act is not subject to a referendum or approval by voters.

(12) Bonds and other financial instruments issued under this act, and any interest on the bonds or financial instruments, are exempt from taxation by this state or any other taxing authority within this state.

(13) This act does not limit or prevent a concessionaire or other private entity from issuing debt securities, issuing obligations, incurring indebtedness, or entering into other arrangements relating to financing a project.

Sec. 19. Unless explicitly authorized in this act, a governance agreement or a public-private agreement under this act shall not require this state, the department, the authority, a separate legal or administrative entity created under a governance agreement, or any political subdivision to expend any state or local funds, including, but not limited to, availability payments for project costs.

**Comment [DOIT45]: NO STATE OR LOCAL FUNDS MAY BE SPENT EXCEPT AS EXPLICITLY AUTHORIZED IN THIS ACT**

Sec. 21. (1) User fees and other charges collected under this act shall be determined and adjusted with due consideration for the amount required to pay project costs, including reserves, to pay

**Comment [DOIT46]: USER FEES (IE. TOLLS)**

bond and other authorized obligations, to maintain reserves for those purposes, and to repay any Canadian contributions, as provided in the governance agreement and public-private agreement.

(2) The proceedings and decisions of a separate legal or administrative entity created by a governance agreement, and the public-private agreement, user fees, and other charges imposed by the authority, are not subject to approval, regulation, or taxation by any other state or local governmental entity in this **state**.

(3) The activities and property of an authority under this act are exempt from taxation by this state or a political subdivision of this state. The activities and property of a separate legal or administrative entity created under a governance agreement are exempt from taxation by this state or a political subdivision of this state. This act does not exempt the activities or property of a concessionaire from taxation under other applicable **laws**.

Sec. **23**. A duly constituted and authorized legislative committee, including, but not limited to, the appropriations committees of the house of representatives or the senate, or the transportation committees of the house of representatives or the senate, or any successor committees, may conduct legislative oversight hearings on activities of the authority at any time, including, but not limited to, activities relating to a public-private agreement or a governance agreement. The authority, the department, political subdivisions of the state, and all private parties to a public-private agreement shall actively cooperate and shall attend the hearing and provide live testimony at the hearing without a subpoena.

**Comment [DOIT47]:** AUTHORITY DECISIONS NOT SUBJECT TO APPROVAL, REGULATION, OR TAXATION BY ANY STATE OR LOCAL GOVERNMENT ENTITY

**Comment [DOIT48]:** AUTHORITY EXEMPT FROM TAXATION; CONCESSIONAIRE NOT EXEMPT FROM TAXATION

**Comment [DOIT49]:** AUTHORITY SUBJECT TO LEGISLATIVE OVERSIGHT HEARINGS AT ANY TIME

Sec. 25. (1) All law enforcement officers of this state and local units of government in which all or part of a crossing is located have the same powers and jurisdiction within the limits of a crossing as they have in their respective areas of jurisdiction to enforce traffic and motor vehicle laws. An authorized emergency vehicle and the occupants of the authorized emergency vehicle shall be afforded access to a crossing while in the performance of an official duty without the payment of a user fee or other charge. As used in this subsection, "authorized emergency vehicle" means that term as defined in section 2 of the Michigan vehicle code, 1949 PA 300, MCL 257.2.

(2) Punishment for violations of traffic and motor vehicle laws within the limits of a crossing shall be as generally prescribed by law.

(3) A person who fails to pay a user fee imposed for use of a crossing is responsible for a civil infraction and is subject to a civil fine of \$50.00. In addition, the person shall pay the crossing operator 2 times the amount of the user fee. If that amount remains unpaid for 180 days after the person's use of the crossing, the department, the authority, or a concessionaire may bring a civil action against the person to collect the unpaid charges in a court having jurisdiction. If the civil action results in a judgment for unpaid charges, the defendant shall also be required to reimburse the plaintiff for all filing fees incurred by the plaintiff plus \$500.00 in compensation for the costs of bringing the civil action.

(4) During the period that a person owes and has failed to pay

**Comment [DOIT50]: PUNISHMENT FOR VIOLATIONS OF TRAFFIC LAWS AND FAILURE TO PAY TOLLS**



charges, fees, and costs under subsection (3), the person and a motor vehicle used by the person may be barred from using the crossing.

(5) Except as provided in section 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof that a particular vehicle used a crossing without payment of the applicable user fee, together with proof from the department of state of the name of the vehicle's registered owner, creates a presumption that the vehicle's registered owner was the person who used the crossing, who failed to pay the user fee, and who is prima facie responsible for the unpaid charges. If the conditions of section 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b, are satisfied, establishing that the vehicle described in the violation was in the possession of, custody of, or was being operated or used by the lessee or renter of the leased vehicle at the time of violation, the lessee or renter of the leased vehicle and not the leased vehicle owner is the person responsible under this section.

(6) The owner of a vehicle alleged to have used a crossing without paying an applicable user fee may assert as an affirmative defense that the vehicle in question, at the time of the use of the crossing, was in the possession of a person whom the owner had not knowingly permitted to operate the vehicle.

Sec. 27. (1) Except as otherwise provided in this act, this state, the department, the authority, a separate legal or administrative entity created under this act, or a political subdivision shall not expend any state funds for project costs

**Comment [DOIT51]: NO STATE FUNDS  
MAY BE EXPENDED EXCEPT AS PROVIDED  
IN THIS ACT**

incurred after the effective date of this act.

(2) The department may expend state and federal funds for the administrative costs of eminent domain proceedings and for professional fees, administrative costs, planning costs, and procurement costs of the authority or the department related to a project. The department may expend state and federal funds for the cost of maintaining and repairing a highway interchange or other highway facility, other than the bridge or border inspection plaza, that are included within a crossing if the interchange or other facility is part of a state trunk line and the maintenance and repair of the interchange is performed after the date the crossing is open for public transportation.

**Comment [DOIT52]: ALLOWANCE OF STATE AND FEDERAL FUNDS FOR LIMITED SUPPORT FUNCTIONS**

(3) A governance agreement or public-private agreement shall not require a pledge of the full faith and credit of this state or a political subdivision of this state.

**Comment [DOIT53]: NO FULL FAITH AND CREDIT OF THE STATE MAY BE PLEDGED**

(4) The legislative council shall report to the governor and the senate and house of representatives standing committees on transportation issues by September 30, 2011 on the implementation status of this act. For the fiscal year ending September 30, 2011, \$10,000.00 is appropriated to the legislative council to perform and prepare this report.

(5) As used in this section and section 19, "state funds" does not include any of the following:

- (a) Project revenues.
- (b) Canadian contribution.
- (c) Project contribution.

Enacting section 1. This act is repealed effective January 1,

**Comment [DOIT54]: ENACTING SECTIONS**

2015 if the authority has not entered into a governance agreement under this act on or before December 31, 2014, unless by December 30, 2014, the director of the department files with the secretary of state a letter stating that the failure to enter into a governance agreement is due in whole or in part to legal challenges, litigation, or other factors beyond the control of the authority.

Enacting section 2. The legislature intends all of the following:

(a) That this act is authorized under section 5 of article III of the state constitution of 1963 and advances a legitimate public purpose.

(b) That this act authorizes this state, the department, the authority, and a separate legal or administrative entity created by a governance agreement to participate in a project under this act relating to a bridge and approaches that will connect this state with Canada and authorizes the collection of tolls for its use pursuant to 33 USC 535.

Enacting section 3. As provided in 1846 RS 1, MCL 8.5, this act is severable. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity of that portion shall not affect the remaining portions or applications that can be given effect without the invalid portion or application, provided the remaining portions are not determined by the court to be inoperable.

Enacting section 4. This act takes effect June 1, 2011.